



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
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FEB 11 2009

In reply refer to
DAR Tracking Number 2009-00003

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation - Suspension of the Price Evaluation Adjustment for
Small Disadvantaged Businesses

Department of Defense (DoD) contracting activities shall continue to suspend the use of the price evaluation adjustment for small disadvantaged businesses (SDBs) in DoD procurement, as prescribed in the Federal Acquisition Regulation (FAR) subpart 19.11 and Defense Federal Acquisition Regulation Supplement (DFARS) subpart 219.11. The suspension is in effect for a one-year period beginning 30 days after the date of this deviation and specifically applies to solicitations issued from March 13, 2009 through March 12, 2010. The current deviation authority is effective through March 9, 2009.

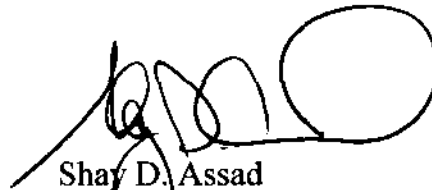
On November 4, 2008, in the case *Rothe Development Corp. v. Dept. of Defense*, the U.S. Court of Appeals for the Federal Circuit found 10 United States Code (U.S.C.) § 2323 unconstitutional. The appellate court returned the case to the U.S. District Court for the Western District of Texas with orders to enter judgment. The scope of the District Court's final order, expected in the near future, will affect the future viability of section 2323. Additional guidance will be provided at that time.

Subsection 2323(e) of title 10 U.S.C. as amended by section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 and section 816 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, and reauthorized by section 842 of the National Defense Authorization Act for Fiscal Year 2006, requires DoD to suspend the regulations that implement the authority to enter into a contract for a price exceeding fair market cost if the Secretary determines at the beginning of the fiscal year that DoD achieved or exceeded the five percent goal established in 10 U.S.C. § 2323(a) in the most recent fiscal year for which data are



available. Based on the current available data for Fiscal Year 2008, the determination is made that DoD exceeded the five percent goal established in 10 U.S.C. § 2323(a). Accordingly, use of the price evaluation adjustment prescribed in FAR 19.11 and DFARS 219.11 is suspended for DoD.

My staff point of contact for this subject is Ms. Susan Pollack at (703)697-8336 or susan.pollack@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement